

**NOT FOR PUBLICATION**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

JAVIER GARCIA,

Petitioner,

V.

UNITED STATES OF AMERICA,

Respondent.

Civil Action No. 19-181 (MAS)

## MEMORANDUM & ORDER

*Pro se* Petitioner Javier Garcia is proceeding with a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. (*See* ECF Nos. 3, 4.) On April 12, 2019, this Court ordered Respondent to file an answer to the Petition within 45 days of the Order. (ECF No. 4.) Respondent has failed to file an answer since the issuance of that Order.

On October 10, 2019, Petitioner filed a Motion for Summary Judgment based on Respondent's failure to file an answer to the Petition. (Mot., ECF No. 8.) The Court construes the Motion as a motion for default judgment against Respondent for its failure to respond. *Accord Ghaziaskar v. Ashcroft*, No. Civ. 3CV041520, 2005 WL 1138377, at \*3 (M.D. Pa. Apr. 27, 2005) (construing motion for judgment as a matter of law based on the government's failure to respond to petitioner's § 2241 petition as a motion for default judgment). Such relief, however, is improper in a habeas proceeding. The Third Circuit has explained that "[e]ven if the Government [has] failed to respond to [a habeas petition], it does not follow that [a petitioner] is entitled to a default judgment." *In re West*, 591 F. App'x 52, 54 n.3 (3d Cir. 2015) (citing *Gordon v. Duran*, 895 F.2d 610, 612 (9th Cir. 1990) (collecting cases)); see also *Bermudez v. Reid*, 733 F.2d 18, 21 (2d Cir. 1984) (noting that if district courts were to grant default judgments in habeas proceedings, "it

would be not the defaulting party but the public at large that would be made to suffer, by bearing either the risk of releasing prisoners that in all likelihood were duly convicted, or the costly process of retrying them"). Accordingly, the Court will deny Petitioner's Motion for Summary Judgment.

Nevertheless, in light of Respondent's failure to file an answer in accordance with the Court's previous Order, the Court will require Respondent to show cause as to why Petitioner's § 2241 motion should not be granted.

**IT IS** therefore on this 6<sup>th</sup> day of November, 2019,

**ORDERED** that Petitioner's Motion for Summary Judgment (ECF No. 8) is **DENIED**;

**ORDERED** that Respondent shall show cause in writing within fourteen (14) days of the date of this Order as to why the § 2241 Petition should not be granted;

**ORDERED** that failure to respond to this Order within fourteen (14) days may result in sanctions; and it is further

**ORDERED** that the Clerk shall send a copy of this Order to Petitioner by regular U.S. mail and to Respondent by certified mail to:

Joseph George Mack  
Office of the United States Attorney  
970 Broad St.  
Newark, NJ 07102

R. Joseph Gribko  
Office of the United States Attorney  
970 Broad St.  
Newark, NJ 07102.

  
**MICHAEL A. SHIPP**  
**UNITED STATES DISTRICT JUDGE**